

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY LABARBERA and FRANK FINKEL,
Trustees of Local 282 International
Brotherhood of Teamsters Welfare,
Pension, Annuity, Job Training and
Vacation Sick Leave Trust Funds,

Index No.: 06-CV-1027 (ARR)(VVP)

Plaintiffs,

-against-

RIVER TRUCKING & RIGGING, INC.,

Defendant.
-----X

**JUDGMENT AND
PERMANENT INJUNCTION**

This action having been commenced on March 7, 2006, by the filing of a Complaint, and a Summons and Complaint having been served on Defendant RIVER TRUCKING & RIGGING, INC. by service upon the Secretary of State on March 10, 2006, and Defendant having failed to appear and answer and Defendant being in default, and Defendant not being an infant, incompetent or in the military of the United States,

NOW, upon application of Avram H. Schreiber, Esq., attorney for Plaintiffs, it is

ORDERED, ADJUDGED AND DECREED that Plaintiffs GARY LABARBERA and FRANK FINKEL, as Trustees of Local 282 International Brotherhood of Teamsters Welfare, Pension, Annuity, Job Training and Vacation/Sick Leave Trust Funds, have judgment against Defendant RIVER TRUCKING & RIGGING, INC. in the amount of \$7,217.15, plus costs and disbursements in the sum of \$325.00, totaling \$7,542.15, and that Plaintiffs have execution therefore, and it is further,

ORDERED, ADJUDGED AND DECREED, that Defendant and its agents, directors, officers, successors, heirs and assigns, shall not, for so long as they remain obligated to

contribute to the Plaintiff FUNDS, fail, refuse or neglect to submit required contribution reports and payments in accordance with the rules of the Fund, and it is further,

ORDERED, ADJUDGED AND DECREED, that Defendant's obligation pursuant to this injunction shall remain in force and effect as long as they are signatory to a Collective Bargaining Agreement with Local 282 I.B. of T. and/or are obligated to pay contributions to the Plaintiffs herein pursuant to a Collective Bargaining Agreement, Declaration of Trust or any other obligation to contribute to Plaintiff FUNDS and it is further,

ORDERED, ADJUDGED AND DECREED, that any and all amounts awarded Plaintiff FUNDS shall be without waiver of or prejudice to the rights of the Trustees of Local 282 I.B. of T. pertaining to the posting of a surety bond or alternate security, and to audit the books and records of Defendant, RIVER TRUCKING & RIGGING, INC. for all periods, inclusive of the time period encompassed in the Complaint, and/or subject the time period to other means of verification, and to collect any additional contributions, interest, liquidated damages, audit fees and attorneys' fees and costs found to be due and owing for said periods as a result of the audit or other means of verification.

Dated: Brooklyn, New York

April 19, 2006

SO ORDERED AND ADJUDGED

ALLYNE R. ROSS U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY LABARBERA and FRANK FINKEL,
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Brotherhood of Teamsters Welfare,
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Vacation Sick Leave Trust Funds,

Index No.: 06-CV-1027 (ARR)(VVP)

Plaintiffs,

-against-

**AFFIRMATION IN SUPPORT
OF DEFAULT JUDGMENT
AND PERMANENT INJUNCTION**

RIVER TRUCKING & RIGGING, INC.,

Defendant.
-----X

Avram H. Schreiber, an attorney duly admitted to practice before the United States District Court, Eastern District of New York, under the penalties of perjury, herein affirms:

1. That I represent Plaintiffs in the within action and am fully familiar with the facts stated herein.
2. I make this affirmation for the purpose of the entry of judgment against Defendant herein.
3. This action was commenced on March 7, 2006. The Summons and Complaint was served on Defendant RIVER TRUCKING & RIGGING, INC. by service on the Secretary of State on March 10, 2006. A copy of the Summons, Complaint and Affidavit of Service is annexed hereto as **Exhibit "A"**.
4. Defendant is not incompetent, an infant or in the military.
5. Defendant RIVER TRUCKING & RIGGING, INC. has not answered or otherwise appeared in the action and therefore is in default.

6. The complaint contained five causes of action. The first three seek monetary damages in the amount of \$8,482.73 for the periods of August 2005, October 2005 and November 2005.

7. As to the fourth cause of action, any amounts which may become due and owing may be included as part of this action at the time of trial or judgment. The Defendant has failed to submit reports and payments or has made untimely submissions of reports and payments for the period of December 2005. For this period, there are additional sums due and owing in the amount of \$3,090.17.

8. The fifth cause of action seeks a permanent injunction enjoining Defendant from future violations and breaches under the applicable Collective Bargaining Agreement, as such agreement relates to the Plaintiffs herein. Further, the Declaration of Trust and the provisions of ERISA 29 USC 1132 *et seq.* specifically provides for a mandatory injunction in those cases where the employer has failed to produce books and records.

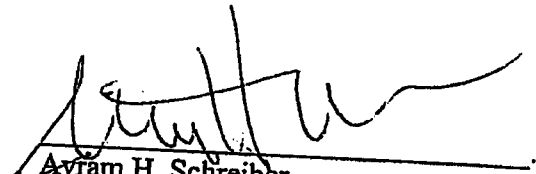
9. Further, the continued refusal of the Defendant to report and pay the contributions and to allow an audit seriously prevents the Plaintiffs-Trustees from assuring that all fund beneficiaries are receiving proper eligibility and pension credits. Further, the Permanent Injunction requires Defendant to do nothing more than it is obligated to do under the applicable Collective Bargaining Agreement.

10. Contemplating the serious adverse effect of violation of ERISA 29 USC 1101, *et seq.*, the legislature specifically provided for injunctive relief to prohibit any such violations. See ERISA, 29 USC 1132(a)(3); *Teamsters Local 639-Employer Trust v. Jones & Artis Construction Co.*, 640 F.Supp. 233 (Dist. Ct.D.C. 1986); *Laborers Fringe Benefit Funds-Detroit and Vicinity v. Northwest Concrete and Construction Inc.*, 640 F.2d 1350 (6th Cir. Ct. App.

1981); *Van Drivers Union Local No. 392, et al. v. Neal Moving & Storage*, 551 F.Supp. 429 (Dist. Ct. N.D. Ohio 1982).

11. By reason of the foregoing, it is respectfully requested that the Judgment and Permanent Injunction be signed by the Court.

Dated: New York, New York
April 4, 2006


Avram H. Schreiber
(AS-2860)

★ APR 17 2006 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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GARY LABARBERA and FRANK FINKEL,
Trustees of Local 282 International
Brotherhood of Teamsters Welfare,
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Index No.: 06-CV-1027 (ARR)(VVP)

Plaintiffs,

-against-

CLERK'S CERTIFICATE

RIVER TRUCKING & RIGGING, INC.,

Defendant.
-----X

I, Robert C. Heinemann, Clerk of the United States District Court, for the Eastern District of New York, do hereby certify that the docket entries in the above-entitled action indicate that the Summons and Complaint, herein were filed on March 7, 2006, and that the Defendant RIVER TRUCKING & RIGGING, INC. was served with a copy of the Summons and Complaint by service upon the Secretary of State on March 10, 2006. I further certify that the docket entries indicate that Defendant has not filed an answer or otherwise moved with respect to the Complaint herein; and that the time to answer or move with respect to the Complaint has expired. The default of the Defendant is hereby noted.

Dated: Brooklyn, New York

April 14th, 2006

Robert C. Heinemann
Clerk

by: Janet Hamilton
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GARY LABARBERA and FRANK FINKEL,
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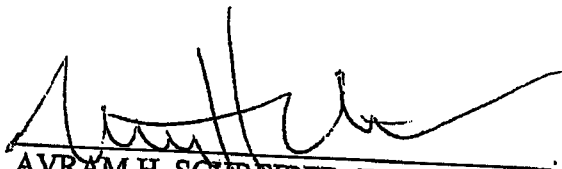
**REQUEST TO ENTER
DEFAULT**

Defendant.

TO: ROBERT C. HEINEMANN, CLERK OF THE
UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Please enter the default of Defendant RIVER TRUCKING & RIGGING, INC. pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend the above-captioned action as fully appears from the Court file herein and from the attached affirmation of Avram H. Schreiber, Esq.

Dated: New York, New York
April 4, 2006



AVRAM H. SCHREIBER, ESQ.
40 Exchange Place, Suite 1300
New York, New York 10005
212-425-7670
(AS-2860)